MHA Michigan Health & Hospital Association | Leading Healthcare

To: Members, Senate Committee on Insurance

From: Chris Mitchell, Senior Vice President, Advocacy

Date: June 6, 2018

Re: House Bills 5217-19

MHA Position: Oppose

This bill package attempts to curtail the use of air ambulance, primarily rotary aircraft, for nonemergency patients. The tactic employed to reduce the use of air ambulance is to require hospitals to pay the balance bill of any amount that remains after a health benefit plan pays its portion. While the hospital community is aware of the problems of large balance bills and is willing to work to eliminate the burden incurred by patients and their families of large health care bills. However, forcing hospitals and health care systems to pay the balance bill shifts the problem rather than resolving it.

The federal Airline Deregulation Act (ADA) does not allow states to regulate air travel, air traffic and aircraft operators. These bills cannot eliminate or regulate balance billing because the ADA has been upheld as pre-empting that state-level regulation. These bills force the balance bill responsibility onto hospitals because the Legislature cannot get to the air ambulance providers directly.

Specific concerns:

Senate Bill 5217 (S-1) Draft 1—In sec. 21540 (p.7) the bill refers to a hospital making a requirement that a patient be transported in a specific way. Under the public health code a hospital is defined as a facility offering inpatient, overnight care, and services for observation, diagnosis, and active treatment of an individual with a medical, surgical, obstetric, chronic, or rehabilitative condition requiring the daily direction or supervision of a physician. Clearly, a hospital is not an animate object which makes decisions. Clinical decisions about patient care are made by physicians and other qualified, licensed clinicians. The legislation should reflect this.

Senate Bill 5218 (S-1) Draft 3—This bill requires extensive action on the part of hospitals to identify detailed information about an individual patient's health benefit plan. Then it exempts the hospital from completing the required disclosure if the information is not available to the hospital.

Again—the term hospital here is probably not appropriate. There is also a modifier that the hospital offer a "good faith" estimate of the cost of air ambulance transport. There is not a definition of what constitutes "good faith."

In sec. 21541 (1) (C), a hospital is required to disclose the steps take to attempt to make the good-faith effort to disclose the information about the participation and pricing of the potential air ambulance provider.

The notice requirement to the patient in sec. 21541 is lengthy, requires detailed information about a patient's health benefit plan that will require a hospital administrative department to keep or track extensive information about health care benefits. It is possible that air ambulance operations will not disclose price information because they cannot be compelled to do so under the ADA. In sum, the notice provisions in the section are burdensome, adding more cost to care delivery. **More importantly, the patient conversation required under this section is likely to frighten patients and create anxiety about their immediate safety and a later out-of-pocket expense. Requiring this conversation at the bedside during critical moments of care is not a solution to balance billing.**

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Senate Bill 5219 (S-1) Draft 2—This bill primarily regulates air ambulance operations. The MHA does not argue with the intent of this effort, but points out that under the current version of the ADA, most of this bill would be pre-empted.

Sec. 21542 requires hospitals to allow all participating provider air ambulances to land at hospitals with appropriate infrastructure. The MHA does not oppose this provisions. However, it is not clear how a violation of this section is relevant to a specific patient billing issue. The penalty in this section is not appropriate and is covered by the penalty stated in HBs 5217 and 5218.

If you have any questions about the content of this memo, please contact me at (517) 703-8622 or cmitchell@mha.org.